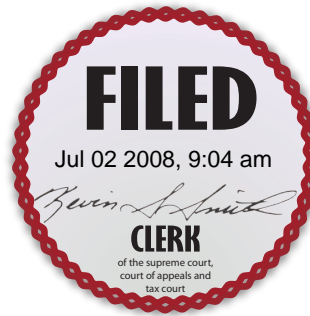


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNY P. FORD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A03-0802-CR-77

APPEAL FROM THE ELKART SUPERIOR COURT
The Honorable David C. Bonfiglio, Judge
Cause No. 20D06-0706-FD180

July 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Johnny Ford was convicted of Theft as a Class D felony¹ and found to be a Habitual Offender.² Upon appeal, Ford challenges the sufficiency of the evidence to support his theft conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 7, 2007, at approximately 5:00 p.m., eighty-one-year-old Conie Polezoes was shopping at the Martin's Supermarket in Elkhart. Ford, who Martin's employee Lauren Merrill recognized to be a suspect from a prior theft, was also in the store at the time. Upon seeing Ford, who had an empty shopping cart and was wearing a white button-down shirt, Merrill asked another employee to contact the store management. Store manager Chris Belakovich then looked for Ford and confirmed that he was the past suspect. Belakovich subsequently notified the police of Ford's presence.

While Ford "shopped," a young lady, later determined to be Jennifer Patrick, approached Polezoes in the magazine section and asked Polezoes about a certain magazine. While Polezoes was distracted by Partick, a man in a white button-down shirt walked past Polezoes's cart. Polezoes's billfold and wallet were in the child's seat of her cart, and they contained \$480.00 in cash, an additional \$220.00 in cash located inside of a bank envelope, as well as her driver's license and other identification and credit cards. Shortly after Patrick walked away from

¹ Ind. Code § 35-43-4-2(a) (2006).

² Ind. Code § 35-50-2-8 (2006).

Polezoes, Polezoes realized that her billfold was missing and notified Martin's of the theft. Security cameras at Martin's were recording at the time and captured all of the above events on videotape.

Belakovich saw Ford exit the store, having made no purchases, and enter a small vehicle, from which Belakovich obtained the license plate number. Corporal Scott Hauser of the Elkhart City Police Department arrived at the scene as this vehicle left the Martin's parking lot. He followed the vehicle for a short time and then performed a traffic stop. Corporal Hauser patted Ford down and felt a bulge, later determined to be \$480 of loose cash, in Ford's front pocket. Corporal Hauser then gained permission to search the vehicle, and found Polezoes's wallet, billfold, her credit cards, identification cards, and a bank deposit envelope.

On June 11, 2007, the State charged Ford with theft. On October 26, 2007, the State filed additional information charging Ford with a second count of theft and alleged that Ford was a habitual offender. At a November 5, 2007 trial, a jury found Ford guilty of both counts of theft, and Ford admitted to being a habitual offender charge. A sentencing hearing was set for December 5, 2007, during which the trial court merged the two theft convictions and entered judgment of conviction. Ford was sentenced to three years of incarceration for theft enhanced by four and one-half years of incarceration for his being found to be a habitual offender. Ford now appeals.

DISCUSSION AND DECISION

Ford's sole challenge on appeal is to the sufficiency of the evidence to support his conviction for theft. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). We will not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. If substantial evidence of probative value exists to establish every material element of an offense beyond a reasonable doubt, we will affirm. *Jones*, 701 N.E.2d at 867.

To convict Ford of theft as a Class D felony, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the property of another person with the intent to deprive that other person of any part of its value or use. *See* Ind. Code § 35-43-4-2(a). Ford challenges his conviction by claiming that the identification of him as the thief was based on insufficient evidence. We disagree.

Ford argues that Belakovich, the store manager, was the only witness to identify him as the thief, but that Belakovich's testimony came from Martin's security tape, which he claims was of such poor quality that it was inadequate evidence of his identity.

Regardless of the clarity of the security video, the circumstantial evidence of Ford's guilt is overwhelming. Where the evidence of guilt is essentially

circumstantial, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the jury; if so, there is sufficient evidence. *Bruce v. State*, 375 N.E.2d 1042,1080 (Ind. 1978), *cert. denied*. Even if we remove all testimony in this case which relied on the security video, there is still enough circumstantial evidence to convict Ford of theft. *See Jones v. State*, 523 N.E.2d 750,752 (Ind. 1988) (noting that a guilty verdict may be based on circumstantial evidence alone). Ford was in Martin's at the time of the theft, he was seen leaving the store without having made any purchases shortly thereafter, and most importantly, Polezoes's personal identification cards and credit cards were found in the vehicle Ford left and was stopped in, and \$480.00, the exact cash amount Polezoes reported stolen from her billfold, was found on Ford's person. The evidence was sufficient for the jury to find that Ford committed Class D felony theft beyond a reasonable doubt.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.